

COMMITTEE ON SUPERIOR COURT MINUTES

Friday, February 1, 2013

Conference Room 119 A/B

State Courts Building, 1501 W. Washington, Phoenix, AZ 85007

Present: Judge Janet Barton, Judge James Conlogue, Judge David Cunanan, Judge Robert Duber, Judge Steven Fuller, Judge Richard Gordon, Judge Charles Gurtler, Sue Hall, Judge Charles Harrington, William Klain, Judge Kenneth Lee, Judge David Mackey, Judge Colleen McNally, Charles Moter, Patricia Noland, Judge Monica Stauffer, Judge Randall Warner, Susan Wilson.

Present Telephonically: Judge Carey Hyatt.

Absent: Joshua Halversen, Judge Celé Hancock, Judge Michala Ruechel.

Administrative Office the Court (AOC) Staff: Kay Radwanski, Kym Lopez.

Guests: Thomas Alongi (Community Legal Services), Theresa Barrett (AOC), Kent Batty (Pima County Superior Court), Stewart Bruner (AOC), Cindy Cook (AOC), Judge Kenton Jones (Yavapai County Superior Court), Amy Love (AOC), Brian Pollock (Lewis & Roca, LLP), Judge John Rea (Maricopa County Superior Court), Judge Peter Swann (Court of Appeals, Division I), Cindy Trimble (AOC).

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the February 1, 2013, meeting of the Committee on Superior Court (COSC) was called to order at 10:00 a.m. by Judge David Mackey, chair. Judge Mackey welcomed new members Judge Janet Barton (Maricopa County) and Chuck Moter (Apache County).

B. Approval of Minutes

The draft minutes from the November 2, 2012, meeting of the COSC were presented for approval. Judge Charles Harrington requested that the minutes reflect that he opposed the State Bar's rule petition to revise the Rules of Civil Procedure regarding case management and trial settings based on increased costs, changes that would be needed in the courts' case management systems, and the number of cases a judge would have to touch.

Motion: Judge Harrington moved to approve the November 2, 2012, meeting minutes as amended. **Second:** Judge Monica Stauffer. **Vote:** Unanimous.

II. BUSINESS ITEMS/POTENTIAL ACTIONS ITEMS

A. Proposed Amendments to ARFLP Rule 12 Regarding Child Interviews

Thomas Alongi, chair of the State Bar's Family Practice and Procedures Committee (FPPC), presented proposed amendments to Arizona Rules of Family Law Procedure

(ARFLP) Rule 12 regarding child interviews. Mr. Alongi requested that members submit comments to him by April 1, 2013.

Member comments included:

- Concerns about admonitions to judges in Rule 12(B), which create an underlying assumption that judges need to be told how to do their jobs.
- The provision requiring judges to give lawyers a period of time to respond to an interview is positive.
- The proposal would take away the judge's discretion to seal the record of the interview from parents. An exception should be provided to allow sealing of the record for the health and safety of the child.
- Wording should be changed to read that a record of the interview *may* be available instead of *must* be available.
- A party should be able to request a child interview on written motion or oral motion made in open court.
- The rule change could have a chilling effect on a child's freedom to speak openly. The judge will get greater honesty and candor from the child if the child is free to be candid.
- A judge may have difficulty determining whether to interview a child 14 days prior to a hearing as the judge should hear all evidence before deciding whether it is necessary to interview the child. A child interview should occur only as a last resort.

Mr. Alongi responded to the comments and will take them back to the FPPC.

B. Rule Petition to Revise the Rules of Civil Procedure Regarding Case Management and Trial Settings

Brian Pollock, William Klain, and Judge Peter Swann, members of the State Bar's Civil Practice and Procedure Committee (CPPC), discussed the State Bar's petition (R-13-0017) to revise the Rules of Civil Procedure regarding case management and trial settings. The State Bar filed its Rule 28 petition in January. Mr. Pollock and Mr. Klain discussed the changes that were made to the petition in response to comments received at the November 2, 2012, COSC meeting. Mr. Klain noted that the State Bar's Board of Governors was made aware of concerns raised at the November COSC meeting.

Judge Swann explained that the proposed rule change would give attorneys and litigants a fair expectation of what happens in court. Rule 16 gives a judge the ability to manage the calendar. Judge Swann noted that a civil trial requires immense resources, and if a civil trial has to be continued because the calendar is stacked up, the value is lost to the litigants.

Concerns were raised about the impact on Pima County, where a majority of cases are concluded in 18 months and continuances are rare. A member was concerned that these changes and monitoring will require major changes in Pima County's AGAVE

case management system. Judge Swann said that during its development, this approach was discussed with the presiding judges of several rural counties. The process was recommended to them, and it worked, saving time and money.

It was suggested that if Maricopa County's case processing is driving the rule change, it could adopt a local rule to address the issues. Mr. Klain said the rule change is not an attempt to restrict judges or manage their courtrooms. Rather, the proposal is trying to standardize procedures statewide. He noted that if the petition is adopted, an educational and cultural shift will be required.

The petition is on a staggered comment schedule, with an April 1 deadline for the first round of comments.

C. Proposed changes to ACJA § 1-602: Digital Recording of Court Proceedings

Stewart Bruner, AOC staff to the Commission on Technology, reviewed proposed changes to ACJA § 1-602, "Digital Recording of Court Proceedings." Members are encouraged to submit comments on the ACJA Forum prior to the February 4, 2013, comment deadline.

Mr. Bruner clarified that there are recordings created for public record and recordings created for back-up notes. This code section guides official court records and not recordings made for the purpose of minute entry preparation.

D. Legislative Update

Amy Love, AOC legislative liaison, provided an update on bills of interest to superior court. Currently, more than 700 bills have been filed in the first regular session of the 51st Legislature.

E. Rule 28 Petitions - Update

Kay Radwanski, AOC staff to the Committee on Superior Court, gave an update on recently filed Rule 28 petitions of interest to superior court. Unless otherwise indicated, the comment deadline is May 21, 2013; however, some petitions are on staggered schedules with different deadlines. All Rule 28 petitions can be reviewed on the Court Rules Forum.

F. Arizona Case Processing Standards for Civil, Criminal, Family Law and Probate Cases in Superior Court

Cindy Cook, AOC staff to the Committee on Arizona Case Processing Standards; Judge John Rea, Maricopa County; Judge Kenton Jones, Yavapai County, and Kent Batty, Pima County court administrator, discussed proposed case processing time standards and measurements relevant to cases heard in superior court. The Supreme Court is considering the adoption of time standards for case processing for Arizona,

and the Committee on Arizona Case Processing Standards will provide a report to the Arizona Judicial Council (AJC) in December.

The presenters explained that the time standards are aspirational goals with timeframes that are acceptable to the public but achievable by courts. The National Center for State Courts (NCSC) has created model time standards that have been adapted to conform to Arizona statutes and court rules.

During discussion, a concern was expressed that if a measurement becomes an imperative, it will become a drain on the AJACS case management system. There was also a concern that the standards become more than aspirational at election time for judges who are elected and could affect performance standards for judges who are merit selected.

The presenters responded that the steering committee for the Case Processing Standards Committee extensively discussed creating aspirational goals that do not create unreasonable expectations. From a statistical aspect, there is a need to ensure that case management systems can track meaningful events.

Member input on the proposed time standards is requested, and comments can be submitted online on the Case Processing Standards Committee's webpage.

G. Planning for the Next Strategic Agenda

Theresa Barrett, manager of the Court Programs Unit, Court Services Division, announced that the Arizona Judicial Branch has begun the development of its Strategic Agenda 2015-2020. She made a presentation showing how the planning process works, accomplishments in the current Justice 20/20 agenda, and themes and trends identified by NCSC. Ms. Barrett discussed the role members can play in the development of the next strategic agenda and asked members to participate in "brainstorming" so their suggestions can be provided to the AJC at its June meeting.

Motion: Judge Conlogue moved that a workgroup be established. **Second:** Judge Gurtler. **Vote:** Unanimous.

Members of the Strategic Agenda Workgroup include: Judge Mackey, chair; Judge Barton, Susan Wilson, Mr. Klain, Judge Randall Warner, and Mr. Moter. The workgroup will develop a formal proposal for members to consider at the May 3 meeting. Suggestions for potential new projects and initiatives must be provided to the AJC's strategic agenda subcommittee by May 8, 2013.

Concern was expressed regarding the need for more information and sensitivity to the financial impact on litigants, the cost to litigants of opening a case, and the burden on courts in handling requests for fee waivers and deferrals. Filing fee increases that become effective in March will affect the number of fee waivers requested. The increase is expected to result in more requests for waivers rather than deferrals. Ms.

Barrett noted that access to courts is likely to be a priority for the next strategic agenda.

III. OTHER BUSINESS

A. Next Meeting:

Friday, May 3, 2013, 10:00 a.m. – 2:00 p.m.
Arizona State Courts Building, Conference Room 119 A/B

B. Good of the Order/Call to the Public

None.

Adjourned at 1:36 p.m.